STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:		
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES/ IOWA COUNCIL 61, Petitioner,	)	
and	)	
STATE OF IOWA, Intervenor,	)	CASE NO. 5157
and	)	
OFFICE OF CONSUMER ADVOCATE, A DIVISION OF THE IOWA DEPARTMENT OF JUSTICE, Intervenor.	)	

DECLARATORY RULING

On June 27, 1994, the American Federation of State, County and Municipal Employees/Iowa Council 61 (AFSCME) filed a petition for declaratory ruling with the Public Employment Relations Board (PERB or Board) pursuant to chapter 10 of PERB's rules, 621 IAC 10.1 et seq. The State of Iowa, through the Iowa Department of Personnel (IDOP), subsequently sought and was granted intervenor status pursuant to PERB rule 621-10.6. The parties requested to be heard orally on the questions posed by AFSCME's petition, and oral arguments were scheduled for September 28, 1994, in accordance with the parties' agreement.

On September 6, 1994, the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, filed an application seeking intervenor status, which was granted by the Board on September 8, 1994. OCA subsequently filed, on September 21, 1994, a request that the Board entertain and rule upon additional related issues as part of the pending proceeding or, alternatively, address those issues in a separate declaratory ruling.

On September 23, 1994, the Board granted OCA's request to entertain the additional issues in the pending proceeding and continued the previously-scheduled oral arguments so as to provide the parties sufficient opportunity to address the additional issues raised by OCA. An order rescheduling oral arguments and establishing a deadline for the submission of written briefs was subsequently entered.

The Board heard the parties' oral arguments on October 4, 1994, AFSCME appearing by its representative, Mike Donley, the State by its attorney, Fae Brown-Brewton (via telephone), and OCA by its attorney, William A. Haas. All parties filed briefs in support of their respective positions.

PERB subrule 621-10.2(2), concerning the content of petitions for declaratory rulings, provides that such petitions contain "[t]he specific facts upon which the board is to base its declaratory ruling. . . ." Subrule 621-10.2(3) requires that the petition set forth "[t]he specific questions upon which the petitioner seeks a declaratory ruling."

Accordingly, the facts relevant to our determination are those set forth in AFSCME's petition and OCA's request for our consideration of additional questions. The relevant facts which are set forth may be summarized as follows:

AFSCME is the certified bargaining representative for a number of bargaining units composed of employees of the State. OCA is a division of the Iowa Department of Justice. AFSCME and the State are parties to a collective bargaining agreement which establishes pay grades for job classifications within the AFSCME-represented units.

OCA's staff includes employees in several technical job classifications (Utilities Specialist, Utility Analyst 1, Utility Analyst 2 and Senior Utility Analyst) (hereafter "the technical classes") who are within an AFSCME-represented unit. The applicable pay grades for bargaining unit employees in these technical classes are among those set forth in an appendix to the currently-effective 1993-95 collective agreement between AFSCME and the State, a copy of which was attached to and incorporated in AFSCME's petition.

Article XIV of the AFSCME/State collective agreement contains the following provision:

> ***SECTION 3*** **Savings Clause**
> In the event any Article, section or portion of this Agreement should be held invalid and unenforceable by operation of law or by any tribunal of competent jurisdiction, such decision shall apply only to the specific Article, section or portion thereof specifically specified in the decision; and upon issuance of such a decision, the Employer and the Union agree to immediately negotiate a substitute for the invalidated Article, section or portion thereof.

Iowa Code section 476.2(2) provides, in relevant part, that the Iowa Utilities Board:

> . . . shall employ at rates of compensation consistent with current standards in industry such professionally trained engineers, accountants, attorneys, and skilled examiners and inspectors . . . as it may find necessary for the full and efficient discharge of its duties and responsibilities as required by this chapter.

Similarly, Iowa Code section 475A.3(3) provides, in relevant part:

> The salaries of employees of the consumer advocate shall be at rates of compensation consistent with current standards in industry.
> . . .

Iowa Code section 20.28 provides, in relevant part, that "[a] provision of the Code which is inconsistent with any term or condition of a collective bargaining agreement. . . shall supersede the term or condition of the collective bargaining agreement unless otherwise provided by the general assembly."

The office of the Iowa Attorney General issued an opinion in September, 1993, upon the request of OCA, which concluded, inter alia, that collective bargaining pursuant to Iowa Code chapter 20 for contract-covered OCA employees "must take into account the requirements of [Iowa Code] section 475A.3(3)."

Bargaining for a 1995-97 collective agreement between AFSCME and the State will occur in 1994 and early 1995, and will include negotiations with respect to the wages of employees in the AFSCME-represented units, including those employees in the technical classifications.

I. AFSCME QUESTIONS

In its petition AFSCME requests:

> . . . that PERB make a declaratory ruling as to whether the pay grade term or condition for the Utility Analyst 1, Utility Analyst 2, Utilities Specialist, and Senior Utility Analyst is in conflict with and inconsistent with the Code of Iowa, Sections 475A.3(3) and 476.2(2) and therefore cannot supersede a mandate of the statutory law. If PERB finds in the affirmative, the Petitioner requests that PERB find that the pay grade term or condition is invalid and therefore, pursuant to Article XIII (sic), Section 3 the parties renegotiate the pay grade of the affected job classifications consistent with current standards of the industry.

Ruling on AFSCME Questions

AFSCME has posed what we perceive to be three separate questions:

1. Whether the collective bargaining agreement's pay grade provisions concerning the technical classes satisfy the compensation standards contained in Iowa Code sections 475A.3(3) and 476.2(2) or are inconsistent with those standards;

2. Whether a term or condition of a collective bargaining agreement which is inconsistent with a provision of the Iowa Code supersedes the provision of the Code; and

3. Assuming the collective bargaining agreement's pay grade provisions affecting the technical classes are declared to be inconsistent with sections 475A.3(3) and 476.2(2), whether the pay grade provisions are thus invalid so that the parties are required to renegotiate them pursuant to Article XIV, Section 3 of their agreement.

A. We first note that the initial question posed, concerning whether the contractual pay grades for the technical classes conflict with the "industry standards" requirements of sections 475A.3(3) and 476.2(2), cannot be answered without the benefit of additional facts not set forth in AFSCME's petition or OCA's request for our consideration of additional questions. Even if sufficient facts had been provided in AFSCME's petition or OCA's request, however, we would decline to make the requested declaration.

Iowa Code section 17A.9 provides, in relevant part:

> Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision, rule, or other written statement of law or policy, decision, or order of the agency. . . .

PERB adopted rule 621-10.1 in order to provide for declaratory rulings. The rule mirrors the language of section 17A.9.

Although the Iowa administrative procedure Act thus requires agencies to provide for the filing and disposition of petitions for declaratory rulings, it is clear that an agency may, under appropriate circumstances, lawfully dispose of a petition by declining to rule on its merits.[1]

The central question posed by AFSCME's initial inquiry is how the "at rates of compensation consistent with current standards in industry" language of sections 475A.3(3) and 476.2(2) should be interpreted.[2]

Administrative tribunals such as PERB were established in order to transfer from the courts to an agency the authority to resolve disputes in an area in which the agency is presumed to have expertise superior to the court's. Leonard v. Iowa State Board of Education, 471 N.W.2d 815 (Iowa 1991). We do not possess such expertise in the interpretation of Iowa Code sections 475A.3(3) and 476.2(2). Although OCA, perhaps correctly, characterizes Iowa Code 17A.9 as granting PERB the authority to issue declaratory rulings on the applicability of any statutory provision, the Iowa Supreme Court has indicated that the statute "is intended to allow a ruling on any species of law, however denominated, that is administered by

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[1]See, e.g., A. Bonfield, The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access to Agency Law, the Rulemaking Process, 60 Iowa L. Rev. 731, 807 (1975); Women Aware v. Reagen, 331 N.W.2d 88, 92 (Iowa 1983); Iowa Association of School Boards, 89 PERB 4092.

[2]The parties, through their oral arguments and briefs, have made it clear than an ongoing dispute over the proper interpretation of these sections exists and that OCA, at least, believes "current standards in industry" refers to only the regulated utility industry, while IDOP contends that compensation in both the public and private sectors are to be considered.

the agency." City of Des Moines v. Des Moines Police Bargaining Unit Association, 360 N.W.2d 729, 731 (Iowa 1985) (emphasis added).

PERB does not administer the provisions of chapter 475A or 476. The question of what the General Assembly intended by its use of the phrase "rates of compensation consistent with current standards in industry" is not within our area of specialized expertise. Nor do we believe that our opinion as to the proper interpretation of the sections in question would be entitled to any deference by the courts.

Consequently, even if the facts before us were adequate for us to answer, we would decline to make a declaration in response to this portion of AFSCME's petition, believing that question to be one more appropriate for resolution by the courts.[3]

B. The second question posed by AFSCME's petition is whether a term or condition of a collective bargaining agreement which is inconsistent with a provision of the Iowa Code supersedes that provision of the Code. Unlike AFSCME's initial question, we do perceive this inquiry as one which directly concerns the applicability of Iowa Code section 20.28, a part of the Iowa Public Employment Relations Act--the statutory scheme which this agency administers.

We believe the answer to this question is apparent from the plain language of section 20.28. A term or condition of a collective bargaining agreement which is inconsistent with a

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[3]PERB has previously declined to issue declaratory rulings where determinative facts are in dispute or where a party seeks to resolve an ongoing dispute through the use of the declaratory ruling process, and where another forum exists to more appropriately resolve the issues. See, e.g., Iowa Association of School Boards, 89 PERB 4092.

provision of the Iowa Code does not supersede the Code. Instead, the Iowa Code provision supersedes the inconsistent collective bargaining agreement term or condition, unless otherwise provided by the general assembly. Cf. Polk County v. Civil Rights Commission, 468 N.W.2d 811, 816 (Iowa 1991).

C. AFSCME's final inquiry assumes that we have declared the collective agreement's pay grade provisions concerning the technical classes to be inconsistent with sections 475A.3(3) and 476.2(2). We have declined to make such a declaration. Even had we done so, however, we would be reluctant to make a further declaration concerning the parties' obligations under the terms of their collective agreement.

We have previously noted that:

> [A]lthough it may sometimes be necessary to interpret a collective bargaining agreement in the course of a prohibited practice proceeding or a motion to abate impasse procedures, we do not believe it appropriate to permit utilization of the declaratory ruling process to obtain an interpretation of contractual language. Indeed, a practice of submitting contractual disputes for declaratory ruling could result in substitution of that process in lieu of grievance arbitration under the parties' collectively bargained agreement.

Burlington Community School District, 80 PERB 1739.

Consequently, we decline to issue a ruling on this final aspect of AFSCME's petition.

II. OCA QUESTIONS

In its request that PERB entertain additional issues, which we have granted, OCA asks that we declare:

> A. In collective bargaining negotiations, the State of Iowa and AFSCME bargaining for compensation to be paid to consumer advocate employees must take into

account the requirements of Iowa Code §475A.3(3);

B. Iowa Code §20.9 prohibits the parties to a collective bargaining agreement from negotiating the meaning of a statutory provision, in particular, Iowa Code §475A.3(3); and

C. In collective bargaining negotiations, the State and AFSCME are bound by the Attorney General's opinion as to the meaning of the phrase "current standards in industry" in Iowa Code §475A.3(3) as set forth in the Attorney General Opinion Letter to [the consumer advocate], when bargaining over the compensation to be paid to employees of the OCA.

Rulings on OCA Questions

A. Because of the previously-noted effect of Iowa Code section 20.28 upon collective agreement terms which are inconsistent with other provisions of the Code, we think it is obvious that parties to collective negotiations would be wise to know of and keep in mind the requirements of other relevant statutes, such as sections 475A.3(3) and 476.2(2), so as to avoid the operation of section 20.28 upon the product of their negotiations. Saying that parties should keep the requirements of other relevant statutes in mind in order to insure the effectiveness of their agreement, however, is not the same as saying they must "take into account" those other statutes.

Indeed, it is entirely possible that parties could be totally unaware of even the existence of other relevant statutes, and still bargain provisions which would not be inconsistent with them, thus avoiding the operation of section 20.28 without ever "taking into account" the provisions of the other statutes. Consequently, we do not believe that AFSCME and the State must necessarily "take into account" the requirements of section 475A.3(3) when bargaining the wages of OCA employees, although due to the potential effect of

section 20.28, their failure to do so is at the peril of any agreement they might reach.

B. OCA next asks us to declare that Iowa Code section 20.9 prohibits parties from negotiating the meaning of statutes, in particular section 475A.3(3). We find nothing in Iowa Code section 20.9, nor in any other statutory provision, which prohibits such bargaining. However, we note that it is far from clear to us that either AFSCME or the State proposes to "negotiate" the meaning of section 475A.3(3) in the strict sense.

As we have previously indicated, parties would be well served to be mindful of the requirements of other relevant statutes so as to avoid any inconsistency between their provisions and any collective agreement, thus avoiding the operation of section 20.28. It would thus be prudent for parties to consider the other relevant statutes and attempt to fashion an agreement which is consistent with them. While this process may in fact mean that parties will agree as to how a particular statutory provision is to be interpreted, so that they can bargain a contract which is consistent with that interpretation, we do not view that as truly negotiating the meaning of the statute, but rather as negotiating the contract based upon the parties' interpretation of the relevant statute.

Of course, the parties may in fact be incorrect in their statutory interpretation, and may thus bargain a contractual term which, upon judicial scrutiny, will be found to be inconsistent with the statute's true meaning. The fact that the parties bargained with an incorrect assumption as to a statute's meaning in mind clearly does not make that incorrect interpretation the law or

preclude the courts--the forum with the ultimate responsibility over statutory interpretation--from exercising their authority and determining whether an inconsistency within the meaning of section 20.28 exists or not.

C. Finally, OCA asks us to declare that the State and AFSCME, in their collective negotiations, are bound by the September, 1993 opinion of the Iowa Attorney General as to the meaning of Iowa Code section 475A.3(3).

Although raised in a collective bargaining context, the real question posed here by OCA does not, in our view, in any way address the applicability of any species of law, however denominated, that is administered by or within the specialized area of expertise of this agency. Instead, it is simply a question concerning the effect, if any, which must be given to an opinion of the Iowa Attorney General.

For the same reasons we declined to respond to the merits of AFSCME's first inquiry, we decline to make a declaration concerning the legal effect of Attorney General opinions.

DATED at Des Moines, Iowa this 30th day of December, 1994.

PUBLIC EMPLOYMENT RELATIONS BOARD

Richard R. Ramsey, Chairman

M. Sue Warner, Board Member

Dave Knock, Board Member